IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 96 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX - Applicant(s)
Versus
SANSKAR TRUST - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant(s) : 1,
SERVED BY RPAD - (N) for Respondent(s) : 1,

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CORAM : HONOURABLE MR JUSTICE R. S. GARG
and
HONOURABLE MR JUSTICE D.H. WAGHELA

Date : 04/10/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. Heard Mr Manish R Bhatt, learned counsel for the Revenue. None for the respondent-assessee, though

served.

2. The Income Tax Appellate Tribunal, Ahmedabad Bench 'B', at the instance of the Revenue, under section 256 (1) of the Indian Income Tax Act, has referred the following question for opinion of this Court which arises out of Income Tax Appeals No.2656 and 2657/Ahd/1990 relating to Assessment Year 1982-83 and 1983-84:

> *"Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that the assessee trust is a specific trust and not liable to be charged for income at the maximum marginal rate ?"*

3. The assessee claiming itself to be a specific Trust, submitted its return at 'Nil' but during the assessment proceedings, the Assessment Officer observed that the assessee-Trust was having income from rented property and the Trust was not a specific Trust, it accordingly proposed tax at the maximum

marginal rate under section 164(1) of the Income Tax Act, 1961. Being aggrieved by the said order, the assessee took up the matter in appeal. The CIT (Appeals) observed that the Trust was a specific Trust, as the beneficiaries and their shares were determinate. It accordingly set aside the order passed by the Assessing Officer. The order of the CIT (Appeals) not being palatable to the Revenue, they took up the matter in appeal to the Income Tax Appellate Tribunal. After service of the notice, the assessee preferred its cross objections which were registered as Cross Objections No.242 and 243/Ahd/1992. After hearing the parties, the learned Tribunal observed that the CIT (Appeals) was justified in recording the findings in favour of the assessee, it accordingly dismissed the appeal and at the same time rejected the Cross Objections observing that those were filed simply to support the order of CIT (Appeals). The Revenue thereafter made application for Reference under Section 256(1) of the Act, which were allowed and accordingly the Reference was made.

4. Mr Bhatt, learned counsel for the Revenue, referring to section 164 (1) submits that as the Trust was not a specific Trust because the beneficiaries were not determinate, the Tribunal was unjustified in upholding the order of the CIT (Appeals). His submission is that one of the beneficiaries in the Trust is a Hindu Undivided Family and as the number of the members constituting HUF may increase or decrease in view of death and birth in the family, the Tribunal was required to hold that the assessee-Trust was not a specific Trust and was chargeable at maximum marginal rate.

5. For proper appreciation of the argument, we will have to refer to section 164 (1). Section 164 (1) relevant for our purposes reads as under:

> "164. (1) Subject to the provisions of sub-sections (2) and (3), where any income in respect of which the persons mentioned in clauses (iii) and (iv) of sub-section (1) of section 160 are liable as representative assessees or any part thereof is not specifically receivable on behalf or for the benefit of any one person or where the

> individual shares of the persons on whose behalf or for whose benefit such income or such part thereof is receivable are indeterminate or unknown (such income, such part of the income and such persons being hereafter in this section referred to as “relevant income”, “part of relevant income” and “beneficiaries”, respectively), tax shall be charged on the relevant income or part of relevant income at the maximum marginal rate.”

6. Section 164 clearly provides that where any income or part thereof in respect of which the persons mentioned in clauses (iii) and (iv) of sub-section (1) of section 160 are liable as representative assessees is not specifically receivable on behalf or for the benefit of (1) any one person or (2) where the individual shares of the persons on whose behalf or for whose benefit such income or such part thereof is receivable are indeterminate or unknown, tax shall be charged on the relevant income or part of relevant income at the maximum marginal rate. The requirement of law is that where the beneficiaries from the representative assessee are indeterminate, then

section 164 (1) would apply or in the alternative, where the shares of such beneficiaries are indeterminate, section 164 (1) would apply.

7. In the present case, the facts flowing from the record clearly show that the assessee, Sanskar Trust was settled by Motilal H Patel on 2.11.1979 by a trust deed with a sum of Rs.1000/- in cash. The beneficiaries of the Trust were -

1. Ratilal Motilal Patel HUF
2. Payal Family Trust
3. Meghna Family Trust
4. Dhanvidyaben Kantilal Parikh
5. Jagat Family Trust
6. Gitaben D Patel.

From the description of the beneficiary, it would clearly appear that these beneficiaries could be divided into three categories namely, HUF, 3 Trusts and 2 individuals.

8. So far as HUF is concerned, it is deemed to be a person under section 2(31) of the Income Tax Act. The inclusive definition of person clearly provides that a Hindu Undivided Family would be a person.

9. The Trust certainly can be the beneficiaries of any other Trust because that is the settled legal position. The individuals can always be beneficiaries because in their personal capacity they can be treated as beneficiaries. From a bare perusal of description of the six beneficiaries, it would clearly appear that each one of them is a legal entity and can be a beneficiary. Under the circumstances, it would be appropriate to hold that the beneficiaries of the assessee-Trust are determinate.

10. The argument of Mr Bhatt however, that as the beneficiaries in a HUF may increase or decrease in view of birth and death is concerned, we must hold that the beneficiaries from a Hindu Undivided Family are not claiming any benefits as beneficiaries from the assessee-Trust.

11. So far as the shares of beneficiaries are concerned, the Trust deed has clearly provided for the distribution percentage/ratio in favour of each of the beneficiaries.

12. If the beneficiaries are determinate and their shares are also determinate and fixed, then it cannot be held that the provisions of section 164 (1) for realizing maximum marginal tax would be applicable.

13. The CIT (Appeals) was absolutely justified in upholding the contention of the assessee and the Tribunal was also justified in confirming the same. The question referred for opinion of this Court must be answered in affirmative against the interest of the Revenue. The Reference stands disposed of. No costs.

[R. S. Garg, J.]

[D. H. Waghela, J.]

msp